

EXHIBIT

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: COLUMBIA UNIVERSITY) CA 04-01592
) Boston, MA
PATENT LITIGATION) September 9, 2004
)

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE
TELEPHONE CONFERENCE

APPEARANCES :

(As previously noted.)

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1 issued, we sent letters.

2 THE COURT: I thought -- maybe I misremember. I
3 thought it issued in September, and you didn't send the
4 letter to Biogen until after it wrote in and said, this
5 is our last payment.

6 MR. GINDLER: No, I think we sent letters after
7 the patent issued to everybody who was a licensee and
8 told them areas of the patent (sic). And we didn't sue,
9 start this fight. Actually, Genentech did first. They
10 sued us. And then Amgen sued us. And then Biogen and
11 Genzyme and Abbott sued us. And then Baxter sued us.
12 And once every licensee with any material royalty
13 obligations had sued us, there were only two that were
14 left out, and we thought, well, if we're going to fight
15 it out with most everybody, we might as well fight with
16 everybody, and we brought in J & J and Soronto (sic), who
17 shortly after that sued us back. So this is not a fight
18 that we started.

19 THE COURT: Okay. If the -- let's say the '275
20 claims are not -- I'm satisfied, as Mr. Gindler says I
21 should be, that there's no case or controversy regarding
22 the '275 claims. Then, right now, there are claims
23 against Genentech and J & J that Mr. Gindler would like
24 me to try to have remanded. What are those claims? Mr.
25 Gindler?

1 MR. GINDLER: I think the claim by Genentech is
2 a claim that the license agreement was improperly
3 terminated. I believe that the basis for termination --
4 one of the bases for termination of the Genentech license
5 agreement was the failure to permit an audit.

6 The J & J claim deals with, I believe, a
7 provision which is unique for the J & J agreement, and I
8 think J & J are just concerned that we would be seeking
9 royalties for products made and sold after the expiration
10 date of the original (sic) patent based upon possibly
11 patents in foreign jurisdictions which are still in
12 existence. And I can tell you as to the J & J provision,
13 we're not going to seek any such royalties.

14 THE COURT: Exactly. This is why I want you all
15 to talk because -- I'll get to it shortly. I'm almost
16 done with my questions. Yeah, if that were the only
17 issue that were left, you could settle that. You just
18 said, in effect, you wouldn't seek anything. And then
19 Columbia has counterclaims against Amgen and Immunex.
20 What are those counterclaims?

21 MS. TESSAR: Those counterclaims relate to
22 breach of contract and declaratory judgment -- this is
23 Amanda Tessar -- partially for -- excuse me. The claims
24 are permanent on Amgen and Immunex's breach of contract
25 and failing to pay royalties relating to, initially, both

CERTIFICATE

I, JUDITH A. TWOMEY, RPR, Official Court Reporter for the United States District Court, District of Massachusetts, do hereby certify that the foregoing transcript, pages 1 through 39 inclusive, was taken by me stenographically and thereafter by me reduced to transcription and is a true record of the proceedings in the above-entitled matter to the best of my ability.

JUDITH A. TWOMEY, RPR
Official Court Reporter